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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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March 1, 1995

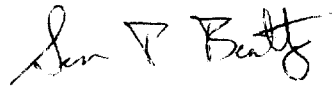
Mr. William Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

On behalf of TeleCellular de Puerto Rico, Inc., enclosed for filing are an original and four copies of reply comments in the wide-area SMR rulemaking. Please stamp the file copy and return it to our courier.

If you have any questions regarding the foregoing, please contact the undersigned.

Very truly yours,



Sean P. Beatty

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)
Amendment of Part 90 of the)
Commission's Rules to Facilitate)
Future Development of SMR Systems)
in the 800 MHz Frequency Band)

PR Docket No. 93-144
RM-8117, RM-8030
RM-8029

and

Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)
800 MHz SMR)

PP Docket No. 93-253

**REPLY COMMENTS OF
TELECELLULAR DE PUERTO RICO, INC.**

TeleCellular de Puerto Rico, Inc. ("TeleCellular"), by its attorneys, hereby files reply comments with respect to the Further Notice of Proposed Rulemaking ("FNPRM") released by the Commission on November 4, 1994 in the above referenced dockets.

I. INTRODUCTION

TeleCellular takes this opportunity to address three specific issues raised in comments filed in this rulemaking. First, many commenters addressed the Commission's proposal to provide incumbent licensees the ability to modify their systems within specific constraints. Second, several commenters recommended replacing the Major Trading Area ("MTA") market definition for wide-area licenses. Finally, at least one commenter proposed permitting short-spacing of existing systems without requiring a waiver request for proposals that do not conform with the short-spacing table found in Section 90.621(b)(4).

II. MODIFICATION OF INCUMBENT SYSTEMS

Most commenters support the concept of permitting incumbent licensees to modify their systems, provided that the incumbent's service area contour is not extended as a result of the modification. TeleCellular supports the principal of flexibility, but strongly urges the Commission not to use the "authorized service area contour" to limit this flexibility.

As Nextel notes in its comments, existing wide-area licensees have made strategic business decisions in reliance upon Commission pronouncements regarding the "footprint" for wide-area systems. See Comments of Nextel Communications, Inc., p.49, January 5, 1995; Letter, dated December 23, 1992, from Ralph A. Haller, Chief, Private Radio Bureau, to David E. Weisman, on behalf of the Ad Hoc Specialized Mobile Radio Industry Group ("Weisman Letter"). The footprint is defined as a 35-mile radius from the coordinates of a primary licensed station. See Weisman Letter, p.3. TeleCellular, in reliance upon the footprint concept, has expended significant resources developing and organizing a wide-area system. In the regulatory environment that existed before August 9, 1994, the height and power of a particular site played no role in determining the extent to which a licensee could apply for microcells on a frequency for which it had a license. Now, however, the Commission has proposed limiting an incumbent's ability to construct fill-in transmitters based on the operating parameters of the primary site. This proposal

prejudices licensees participating in a wide-area system that applied for frequencies without plans to build a traditional high-power SMR system, and therefore did not apply for frequencies using operating parameters that would maximize their service area contours.

TeleCellular offers the following proposal as a solution. Licensees that are part of a system for which extended implementation was requested prior to August 9, 1994 clearly applied for frequencies with the intention of operating as a wide-area system. Those licensees should not be constrained by the operating parameters of the primary licensed facility. Instead, such licensees should be permitted to construct fill-in transmitters at any place so long as the 40 dBu contour of the fill-in does not extend past a 35 mile contour centered at the primary licensed facility. Those licensees that are not part of an extended implementation request did not intend to operate as part of a wide-area system, and therefore, should not be permitted to extend the 40 dBu contour of their authorized facility.

III. MARKET DEFINITION.

In its comments, TeleCellular originally expressed support for the use of MTAs as the basis upon which the Commission should issue wide-area licenses. TeleCellular has reconsidered its position and now supports the use of market definitions created by the Bureau of Economic Analysis, referred to as "BEAs". TeleCellular believes that the

Commission should avoid using market definitions protected by private proprietary interests. In the case of MTAs and Basic Trading Areas ("BTAs"), Rand McNally has asserted its rights to these definitions. Although Rand McNally has entered a license agreement for PCS and 800 MHz services, such an agreement does not exist for other services, specifically 900 MHz and 220 MHz services. Instead of continuing a framework that makes Commission licensees subject to the licensing demands of a private company, the Commission should begin the transition to alternative market definitions. For future 800 MHz licensing, TeleCellular contends that an adequate alternative exists in the form of BEAs.

Currently, the Bureau of Economic Analysis has not created BEAs for Puerto Rico. It is TeleCellular's understanding that BEAs are based, in part, on commuter patterns of citizens in particular areas. Accordingly, TeleCellular recommends that one BEA cover the island of Puerto Rico.¹ For purposes of wide-area licensing, this single BEA would fill the role of the BEA "cluster" recommended by the American Mobile Telecommunications Association, Inc. ("AMTA"). Local licensing would also occur on this single BEA basis. By using a single BEA in Puerto Rico, the Commission would provide flexibility for a wide-area system licensee across the island, while also creating a

¹ Under the Commission's MTA licensing framework, the Virgin Islands were included in the Puerto Rico MTA.

market large enough so as not to constrain traditional high power SMR licensees operating on the lower frequencies, a possible constraint associated with BTA licensing of lower frequencies.

IV. SHORT-SPACING.

Nextel has proposed permitting short-spacing without a waiver even when the distance between transmitters is less than the minimum distance provided for in the Commission's short-spacing table. See Comments of Nextel Communications, Inc., p.48, January 5, 1995; 47 C.F.R. § 90.621(b)(4). TeleCellular adamantly opposes any attempt to further deteriorate the co-channel separation to which an SMR licensee is entitled.

TeleCellular's concern parallels that expressed by the SMR Small Business Coalition. Permitting short-spacing below the minimum criteria could create interference problems more harmful to an incumbent licensee than to a wide-area licensee. See Comments of The Small Business Coalition, p.17, January 5, 1995. As the parties dicker over how to resolve interference created by such unregulated short-spacing, the incumbent's service to its customers suffers, while the wide-area licensee can simply forego loading the interfering channel until the dispute is resolved. As Motorola's comments imply, it is impractical to control signal strength levels to absolutely prevent interference to co-channel licensees. See Comments of Motorola, Inc., p.13 n.18, January 5, 1995. To permit a wide-

area licensee to short-space simply because on paper there is no 40/22 dBu contour overlap does not account for the real world. Accordingly, the Commission should maintain its existing short-spacing standards as solid protection for incumbent licensees.

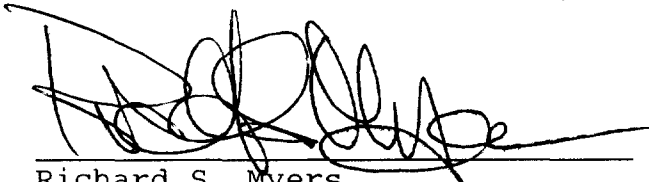
VIII. CONCLUSION

Based on the foregoing, the Commission should allow licensees participating in a wide-area system for which extended implementation was requested prior to August 9, 1994 to construct fill-in transmitters out to a thirty-five mile radius from the primary licensed facility. The Commission should replace the MTA and BTA market definitions with BEAs. Finally, the Commission should maintain the short-spacing criteria embodied in Section 90.621(b) of its rules.

Respectfully submitted,

TELECELLULAR DE PUERTO RICO, INC.

By:



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March 1, 1995